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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/803,121	03/17/2004	Morton Beroza	0082.04	5292

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EXAMINER

PARSLEY, DAVID J

ART UNIT	PAPER NUMBER
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3643

DATE MAILED: 02/10/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/803,121

Applicant(s)

BEROZA, MORTON

Examiner

David J Parsley

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 31 January 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 6-11 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 6-11 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 17 March 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

Detailed Action

Amendment

1. This office action is in response to applicant's amendment dated 1-31-05 and this action is final.

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 6-11 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 2,254,948 to Kubalek or U.S. Patent No. 4,908,977 to Foster.

Referring to claims 6-7 and 9-11, Kubalek and Foster disclose a device/method for providing uniform emission of a flying insect attractant comprising, a container – at 14,16 of Kubalek and – at 1-3 of Foster, comprising a top surface, a bottom surface and side walls – see for example figures 1-2 of Kubalek and Foster, having a composition having at least one liquid attractant for attracting flying insects – see for example page 1 column 2 lines 26-33 of Kubalek and column 2 lines 1-68 of Foster, a wick – at 11 of Kubalek and – at 4 of Foster, and a first opening – at 18, 31 or 38, and – at the open top end of the container – at 1 of Foster, a wick – at

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11, 29 or 37 of Kubalek and – at 4 of Foster, inserted into the container wherein the length of the wick is frictionally adjustable to provide a uniform emission rate of the at least one attractant which results in maximum attraction of the flying insect – see for example figures 1-5 of Kubalek and figures 1-2 of Foster, and a second opening – at 19-20, or the other of 31 or any other of 38 of Kubalek and – at any opening in item 5 of Foster, in the top of the container, smaller than the first opening and large enough to prevent film closure by a liquid, wherein the second opening allows air to enter the device to create air pressure which allows steady flow of liquid attractant to be absorbed into the wick – see for example figures 1-5 of Kubalek and figures 1-2 of Foster, at least one volatile insecticide is in the container and is absorbed by the wick – see for example page 1 column 2 lines 22-25 of Kubalek and column 2 lines 1-68 of Foster, and hanging the at least one trap in a location suspected of being infested by at least one of a targeted pest flying insect – see for example – at 21 or 38 or 39 in figures 1-5 of Kubalek and claim 20 in column 8 of Foster, wherein the composition further includes at least one volatile insecticide wherein the at least one volatile insecticide is absorbed by the wick – see for example page 1 column 2 lines 22-25 of Kubalek and columns 2-4 of Foster.

Claim 8 is rejected under 35 U.S.C. 102(b) as being anticipated by Foster. Foster discloses the first and second opening form a single opening – see figures 1-2, with the first opening – at the top of container – 1, being of a size to frictionally hold a wick – at 4, and the second opening – in item 5, is elongated and narrower than the first opening – see for example figures 1-2.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 8 is rejected under 35 U.S.C. 103(a) as being unpatentable over Kubalek as applied to claim 6 above, and further in view of Foster. Kubalek does not disclose the first and second opening form a single opening with the first opening being of a size to frictionally hold a wick and the second opening is elongated and narrower than the first opening. Foster does disclose the first and second opening form a single opening – see figures 1-2, with the first opening – at the top of container – 1, being of a size to frictionally hold a wick – at 4, and the second opening – in item 5, is elongated and narrower than the first opening – see for example figures 1-2. Therefore it would have been obvious to one of ordinary skill in the art to take the device of Kubalek and add the first and second openings of Foster, so as to allow for the device to be easier to clean and maintain.

Response to Arguments

4. Regarding claims 6, 9 and 11, the Kubalek reference US 2254948 does disclose a volatile liquid attractant – see page 1 column 2 lines 22-33. Kubalek further discloses a frictionally adjustable wick – at 11 or 29 or 37 as seen in figures 1-5. The wick – at 11 or 29 or 37, is held in

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place with no other fasteners and is therefore frictionally held in place and can be adjusted as it is placed into or removed from the container – at 10 or 26 or 32.

Regarding claim 8, the Kubalek reference does not disclose the first and second openings form a single opening as seen above in column 3 of this office action and in combination with the Foster reference US 4908977, renders the claimed invention obvious.

Regarding claims 6, 9 and 11, the Foster reference US 4908977, discloses a volatile compound as seen in columns 2-4 where the toxicant TNMT is used in the liquid – at 6. The Foster reference further discloses a frictionally adjustable wick – at 4, in that the wick is movable into and out of the container – at 1 and is therefore adjustable and the wick – at 4, is frictionally held in place along the interior walls of the container – at 1 as seen in figure 2. Further, the Foster reference discloses openings – at 5, which allow air to flow into the container – at 1, in that as the wick – at 4, absorbs the liquid – at 6, the space vacated by the absorbed liquid – 6, inside the container – at 1, is taken up by air which has a path into the container – at 1, through the openings – at 5. Further, applicant argues that the holes – at 5, are not disclosed as being able to allow a refilling of the container. However, there are no limitations in the claims stating that the openings are used to refill the container with the liquid. The Foster reference further discloses a uniform emission rate of the liquid – at 6, in that the wick – at 4, conforms to the entire inner periphery of the container – at 1, and the entire periphery of the wick – at 4, is located in the liquid at – 6 as seen in figure 2. Therefore, the liquid – at 6, is allowed to be absorbed along the entire portion of the wick towards the top of the container – at 1 proximate items 3-5 as seen in figures 1-2.

Conclusion

5. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to David J Parsley whose telephone number is (703) 306-0552. The examiner can normally be reached on 9hr compressed.

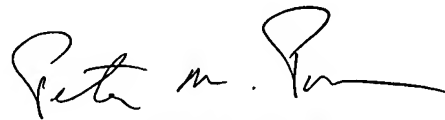
If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter Poon can be reached on (703) 308-2574. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

OP

David Parsley
Patent Examiner
Art Unit 3643



PETER M. POON
SUPERVISORY PATENT EXAMINER

2/7/05